



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Reclamation and Enforcement

4 (Amendment)

5 405 KAR 7:050. Coal processing waste disposal sites.

6 RELATES TO: KRS 151.125, 151.297, 224.071, 350.020, 350.090(1), 350.420

7 STATUTORY AUTHORITY: KRS 151.125, 224.033, 350.020

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.020 states that unregulated  
9 surface coal mining operations create hazards dangerous to life and property and that it is the  
10 purpose of KRS Chapter 350 to provide such regulation and control of these operations in order to  
11 minimize or prevent injurious effects on the people and resources of the Commonwealth. KRS  
12 350.020 directs the cabinet to adopt whatever administrative regulations are found necessary to  
13 accomplish the purpose of KRS Chapter 350. Furthermore, KRS 151.125 and 151.297 provide for  
14 the issuance of remedial orders whenever life or property are or may be endangered by the failure  
15 of any dam, reservoir, levee, embankment, or other water barrier. In addition, KRS 224.071  
16 provides for the issuance of abate and alleviate orders when there is a danger to the health or  
17 welfare of the people of the Commonwealth or to natural resources. This administrative regulation  
18 provides for the control of coal processing waste dams, waste impoundments, and waste banks in  
19 order to prevent loss of life, damage to property, and injurious effects on the environment of the  
20 Commonwealth due to structural failure of these facilities and is necessary because such facilities  
21 are not otherwise adequately regulated. This administrative regulation provides[, among other

1 ~~things,~~] for submittal of engineering reports, performance standards, and remedial measures to  
2 correct dangerous facilities.

3       Section 1. Applicability. This administrative regulation applies to all coal processing waste  
4 disposal sites, whether dams, waste impoundments, or waste banks, that were constructed or  
5 utilized after August 3, 1977, regardless of whether or not the sites are or have been under permit  
6 or bond under KRS Chapter 350.

7       Section 2. Reports. (1) [~~Within sixty (60) days of September 21, 1982,~~] Operators or  
8 owners of coal processing waste disposal sites shall submit two (2) copies of the following to the  
9 cabinet regional office:

10       (a) All existing information currently available to the operator or owner including complete  
11 design of the facility, stability analyses, and a description of the coal processing waste material at  
12 the site including moisture content and particle size gradation. This shall also include copies of  
13 plans submitted to [~~and~~]or approved by MSHA. If such plans submitted to MSHA include all of  
14 the information required by this paragraph, then submittal of copies of such plans shall suffice.  
15 Where information required by this paragraph has already been submitted to the cabinet as a part  
16 of a permit application, the operator or owner shall so notify the cabinet regional office in writing  
17 and need not resubmit duplicate material.

18       (b) As-built drawings of the current phase of construction or of the completed facility as  
19 applicable, including a map showing the location of the facility.

20       (2) Analyses and descriptions submitted under subsection (1)(a) of this section shall be  
21 based upon current information available to the operator or owner. However, on a case-by-case  
22 basis, at any time, the cabinet may require the operator or owner to submit such additional plans  
23 and analyses or to conduct such investigations and testing of materials as necessary to determine

1 the stability of the facility where failure of the facility could cause damage to life or property or  
2 injurious effects on the environment of the Commonwealth. This may include~~[- but is not limited~~  
3 ~~to,]~~ seepage investigations, settlement studies based on compressibility and mining subsidence,  
4 foundation investigations including borings or test pits, laboratory testing of foundation materials,  
5 and determination of strength parameters based on laboratory testing of site specific coal  
6 processing waste materials.

7 Section 3. Performance Standards. (1) Any coal processing waste disposal site impounding  
8 water, or impounding coal processing waste which is physically unstable due to excessive moisture  
9 content or excessive fine-grained material, and any dam containing coal processing waste in the  
10 embankment shall comply with 405 KAR 16:100 or 405 KAR 18:100 ~~[either 405 KAR 1:210 or~~  
11 ~~405 KAR 3:180]~~.

12 (2) All other coal processing waste disposal sites shall comply with 30 CFR 77.214 as  
13 amended at 36 Fed. Reg. 13,143 (1971) and 30 CFR 77.215 as amended at 40 Fed. Reg. 41,776  
14 (1975), provided, however, no facility shall be constructed in such manner that it may cause loss  
15 of life, damage to property, or injurious effects on the environment of the Commonwealth due to  
16 structural failure of the facility.

17 (3) Those portions of structures that have already been constructed and structures that have  
18 been completed need not be reconstructed except where reconstruction is determined by the  
19 cabinet to be necessary to ensure stability of the facility in order to eliminate potential hazards to  
20 life or property or to prevent injurious effects on the environment of the Commonwealth.

21 (4) Nothing in this administrative regulation shall be construed as relieving an operator  
22 from the obligation to comply with any other provision of 405 KAR Chapters 7 - 24, including,

1 but not limited to, compliance with the permanent program performance standards and the  
2 requirements for existing structures in 405 KAR 7:040, Section 4.

3 Section 4. Remedial Measures. Operators or owners of coal processing waste disposal sites  
4 may be required by the cabinet to revise the facility design and/or to implement such remedial  
5 measures as necessary to comply with Section 3 of this administrative regulation.

6 Section 5. Certifications. (1) All designs, maps, plans, and drawings submitted under this  
7 administrative regulation shall be prepared and certified by a qualified registered professional  
8 engineer.

9 (2) Construction or reconstruction of coal processing waste disposal sites shall be inspected  
10 during and after construction by a qualified registered professional engineer or by qualified persons  
11 under the engineer's supervision and the facility shall be certified within two (2) weeks of each  
12 inspection by the responsible qualified registered professional engineer as having been constructed  
13 in accordance with the design approved by the cabinet. Where the cabinet has not yet reviewed  
14 and approved the design, the engineer shall make the certifications based upon the design approved  
15 by MSHA.

405 KAR 7:050 approved for filing.  
Pages (1-4)

9/13/2019

Date

Charles G. Snavely  
Charles G. Snavely, Secretary  
Energy and Environment Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 26, 2019 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 7:050  
Contact Person: Michael Mullins

Contact number: (502) 782-6720  
Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.020 directs the cabinet to adopt whatever administrative regulations are found necessary to accomplish the purpose of KRS Chapter 350. This administrative regulation provides information on performance standards, the submittal of reports, and remedial measures to correct dangerous facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the regulated community information related to submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment inserts citations in place of references to the interim program administrative regulations that were repealed related to coal processing waste disposal sites that are impounding water, or impounding coal processing waste. The interim program administrative regulations were repealed in 2018.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to insert citations to administrative regulations to replace citations to the interim program administrative regulations that were repealed in 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by inserting correct citations that are necessary for the proper regulation of coal processing waste disposal impoundments that are impounding water, or impounding coal processing waste.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.020 directs the cabinet to adopt whatever administrative regulations are found necessary

to accomplish the purpose of KRS Chapter 350. This amendment assists in the effective administration of the statutes by providing information related to coal processing waste disposal sites that are impounding water, or impounding coal processing waste.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that operates coal mines within Kentucky. There are approximately 175 licensed mines in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will continue to operate as normally. The citations that are being inserted will not change the manner in which coal processing waste disposal sites impounding water or coal processing waste will be regulated. It is simply replacing citations to administrative regulations that were repealed in 2018.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs associated with these amendments.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, coal operators will simply have an updated administrative regulation citation that contains all the information for the proper regulation of coal processing waste disposal site impounding water, or impounding coal processing waste.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially: There will be no costs to the department associated with implementation of this amendment.
- (b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.



(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No, tiering was not used. The provisions in this administrative regulation will apply equally to all coal operators.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 405 KAR 7:050  
Contact Person: Michael Mullins, Reg. Coordinator

Contact number: (502) 782-6720  
Email: Michael.mullins@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and Division of Mine Reclamation of Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151.125, 224.033, 350.020.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):	There is no known effect on current revenues.
Expenditures (+/-):	There is no known effect on current expenditures.
Other Explanation:	There is no further explanation.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation No.: 405 KAR 7:050

Contact Person: Michael Mullins, Reg. Coordinator

Contact number: (502) 782-6720

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1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 717.18(b)(5)
2. State Compliance Standards. KRS 350.020.
3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to removal of vegetative growth on dams.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments will not make Kentucky's program more stringent than the federal regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

